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**OFFICE OF PETITIONS**

In re Patent No. 7,244,825	:
Roser	:
Issue Date: July 17, 2007	:
Application No. 10/658,219	:
Filed: September 8, 2003	:
Attorney Docket No.	:
559662000102	:
	:
	:

This is a decision on the 1) Petition under 37 C.F.R. 1.182, "REQUEST FOR RESTORATION OF PATENT TERM ADJUSTMENT" requesting that the Office reconsider the patent term adjustment from 289 days to 406 days.

The petition filed under 37 CFR 1.705(d) is dismissed as **untimely filed**. The petition is further dismissed under 37 CFR 1.182 because 37 CFR 1.705(d) expressly provides a procedure for requesting reconsideration of patent term adjustment.

**BACKGROUND**

On July 17, 2007, the above-identified application matured into U.S. Patent No. 7,244,825, with a revised patent term adjustment of 289 days. No request for reconsideration of the patent term adjustment indicated in the patent was filed within two months of the date the patent issued. On May 23, 2008, patentee

petitions under 37 C.F.R. § 1.182 to consider the enclosed Request for "REQUEST FOR RESTORATION OF PATENT TERM ADJUSTMENT".

### FACTS

The above-referenced patent issued on July 17, 2007. A request for reconsideration of the patent term adjustment indicated in the patent was not filed until May 23, 2008, approximately 10 months after the issuance of the patent.

Patentee requests that the Office restore the patent term adjustment from 289 days to 406 days. Patentee asserts that the Office forms under 35 USC 1.54(b) for a terminal disclaimer did not provide a check for an exception, as a result petitioner resubmitted the terminal disclaimer with the issue fee. Patentee asserts that the Office then reduced the patent term by 117 days to 289 days.

### DISCUSSION

1.704 (c)8) Reduction of period of adjustment of patent term provides:

8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

37 CFR 1.82 provides:

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in

37 CFR 1.705(d) provides:

If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised

patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues. (*Emphasis added*).

No error in the printing of the patent has been shown. The patent term adjustment indicated on the patent reflects the Office's determination of patent term adjustment shown in the PAIR system for this application.

37 CFR 1.705(d) is the regulation for requesting reconsideration of the Office's determination of patent term adjustment indicated in the patent. Moreover, § 1.705(d) states that "any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section." Since the request was not filed within two months of the issue date of the patent, the request is properly dismissed as untimely filed.

Moreover, since the regulations provide a mechanism for requesting reconsideration of patent term adjustment, applicant cannot establish grounds for a grantable petition under 37 CFR 1.182.

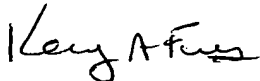
Assuming *arguendo* the request had been timely filed, the outcome of the decision would be the same. Patentee asserts that the reduction in patent term adjustment was the result of filing a substitute terminal disclaimer with the submission of the issue fee. However, it is noted, that the reduction of the patent term adjustment after the notice of allowance was reduced for the filing of the supplemental Information Disclosure Statement on March 13, 2008.

In the case at hand, the supplemental information disclosure statement was filed with the issue fee payment and is considered a reduction against patent term adjustment under 37 CFR 1.704(c)(10).

#### CONCLUSION

The request for reconsideration of the patent term adjustment under 37 CFR 1.182 and 1.705(d) filed more than two months after the issue date of the patent is DISMISSED as untimely filed as well as being DISMISSED as being specifically provided for in the rules.

Telephone inquiries specific to this matter should be directed to Kery Fries, at (571) 272-7757.



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